

Tentative Rulings and Resolution Review Hearings
September 4, 2015
Butte Exchange (Department 7)

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court's website (www.shasta.courts.ca.gov) and are available by clicking on the "Tentative Rulings" link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

TIGNOR VS. ERIC ALAN BERG & ASSOCIATES, ET AL.
Case Number: 180333

Proposed Tentative Ruling on Plaintiff's Motion for Summary Judgment, or in the Alternative, Summary Adjudication:

Procedural Deficiencies

California Rules of Court, Rule 3.1350(h) requires that a separate statement follow the two-column format described therein. Plaintiff's Separate Statement of Undisputed Facts fails to follow this mandatory format. Failure to comply with the separate statement requirements constitutes ground for denial of the motion, in the court's discretion. CCP § 437c(b)(1).

California Rules of Court, Rule 3.1113 requires a memorandum of points and authorities to be filed in support of the noticed motion which contains a statement of facts, a concise statement of the law, evidence and arguments relied upon, and a discussion of the statutes, cases and textbooks cited in support of the position advanced. Plaintiff's Points and Authorities, contained in their entirety at page 15 of his Separate Statement of Undisputed Facts, recites portions of Code of Civil Procedure section 437c regarding the standard for summary judgment motions, but otherwise cites no legal authority in support of the grounds for the motion. The points and authorities also fail to contain any statement of facts, statement of the law as relevant to Plaintiff's fraud claim, or any arguments in support thereof.

Despite the procedural deficiencies, the Court has exercised its discretion to take into consideration the arguments raised within the Separate Statement of Undisputed Facts and treat them as contained within a memorandum of points and authorities in order to determine whether Plaintiff has met his burden on the motion.

Merits of Motion

A party moving for summary judgment has the burden of establishing, through admissible evidence, that there are no triable issues of material fact and that it is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.App.4th 826, 850. More specifically, where a plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of the causes of action within the complaint. CCP § 437c(p)(1). Once the plaintiff's burden is met, the burden shifts to the defendant to produce admissible evidence showing a triable issue of material fact exists. CCP § 437c(p)(1). Claims and theories not supported by admissible evidence do not raise a triable issue. *Rochlis v. Walt Disney Co.* (1993) 19 Cal.App.4th 201, 219 (disapproved on other grounds). Conclusions of fact or law are not sufficient as evidence. *Snider v. Snider* (1962) 200 Cal.App.2d 741, 751.

Plaintiff's amended complaint alleges a single cause of action for fraud. The elements of fraud are: (1) a misrepresentation (false representation, concealment or nondisclosure); (2) knowledge or falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damages. *See Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990-991. As such plaintiff's burden on the motion is to establish each of these elements through admissible evidence, so that there is no remaining controversy and

judgment can be rendered in his favor.

Plaintiff claims he was billed and paid for legal services that Defendant did not perform, and that Defendant fabricated bills for services he knew he did not perform. Plaintiff's evidence in support of the motion consists of his amended complaint and exhibits thereto, Defendant's answer to the amended complaint, Defendant's responses to written discovery, Defendant's invoices to Plaintiff, an unfiled Request for Reconsideration of Denial of Petition for Writ of Habeas Corpus, a filed copy of the federal court's order on a motion for reconsideration filed on behalf of Plaintiff, and Plaintiff's own declaration. Having reviewed and considered the entirety of the evidence in the light most favorable to Plaintiff, the Court concludes that the evidence fails to establish the requisite elements for fraud. Plaintiff's declaration, as well as the arguments stated within his Separate Statement of Undisputed Facts, consist of impermissible conclusions focused on the contention that Defendant could not have completed the services billed for. The evidence fails to prove as fact that the services in question were not completed, and moreover, the evidence fails to make any showing at all of the scienter, intent, reliance and damage elements for a fraud cause of action. Plaintiff has failed to meet his burden on the motion.

Plaintiff's motion for summary judgment is DENIED. As Plaintiff's amended complaint consists only of the fraud cause of action, the alternative motion for summary adjudication is also DENIED. Defendant shall prepare the order in accordance with CCP § 437c(g).

MARQUIS COMPANIES 1, LLC, ET AL. V. BENSON ET. AL.
Case Number: 11CV1358

Tentative Ruling on Motion for Summary Judgment:

Objections

Both parties have provided objections but neither party has complied with CRC Rule 3.1354. Defendant's objections are in neither of the required formats. Plaintiff's objections are also not provided in one of the two formats required by CRC Rule 3.1354. For these reasons, all objections are OVERRULED for failure to comply with CRC 3.1354.

Merits of Motion

Plaintiff, Marquis Companies 1, Inc. seeks judgment in its favor based on the California Standard Admission Agreement (hereinafter the "Agreement") and services provided to Decedent. As for the Agreement it was not signed by Defendant, Benson, but was rather signed by his wife. For this reason alone the Agreement itself does not impose liability on Defendant, Benson since he is not a signatory to the Agreement. Regardless of whether Defendant Benson signed the Agreement, there was an Agreement in place between Plaintiff and the Decedent. Pursuant to that Agreement Decedent was provided valuable services which have not been paid for. The Plaintiff therefore is a creditor of the Decedent.

Plaintiff has provided the Declaration of Katsares, which establishes her role as custodian of records, that she held the position of Business Office Manager and that she has reviewed the records of the business. Ms. Katsares then authenticates multiple documents and invoices. Finally, she also affirmatively states that the amount owed for the care and services provided to the Decedent is \$20,775.46. In sum this information affirmatively establishes that the amount owed was \$20,775.46.

Pursuant to Probate Code § 19001, upon Decedent's death the property that was in the Trust estate became subject to the claims of Decedent's creditors. Probate Code section 19008 provides, "If there is no proceeding to administer the estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors pursuant to Section 19003 and does not publish notice of creditors pursuant to Chapter 3 (commencing with Section 19040), then the liability of the trust to any creditor of the deceased settlor shall be as otherwise provided by law." Plaintiff claims that under Probate Code § 19001 upon Decedent's death on July 12, 2011, the property of the Trust became subject to the claims of Decedent's creditors including Plaintiff. Defendant, Benson's declaration dated March 23, 2013 and filed in this action affirmatively establishes that the Trust exists

and that there is no proceeding now pending in California for the administration of the Decedent's estate. Plaintiff has also provided in its separate statement of undisputed facts that Defendant Benson has not initiated the discretionary trust claims procedure set forth in Probate Code 19000 et seq. Defendant states this fact is "Undisputed." Therefore both requirements imposed by Probate Code § 19008 have been satisfied.

The Court finds that a creditor claim exists in the amount of \$20,775.46 and that the requirements of Probate Code § 19008 have been satisfied. Plaintiff has met its burden CCP § 437c. The burden then shifts to Defendant to create a triable issue of fact which it has failed to do. Therefore the motion for summary judgment is GRANTED as against the Trust.

Plaintiff also alleges that Defendant, Benson is also personally liable to Plaintiff under Probate Code § 19400 which states "Subject to Section 366.2 of the Code of Civil Procedure, if there is not proceeding to administer the estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors . . . then a beneficiary of the trust to whom payment, delivery, or transfer of the deceased settlor's property is made pursuant to the terms of the trust is personally liable . . ." This section makes Defendant, Benson liable to the extent he has received any assets of the Trust as a beneficiary Plaintiff's summary judgment as against Defendant, Benson is also GRANTED but only to the extent that he has received any funds/assets from the Trust estate.

The motion for summary judgment is GRANTED in its entirety. A proposed order has been lodged with Court but it does not satisfy the requirements of CCP § 437c(g). Plaintiff shall prepare the order in accordance with CCP § 437c(g).

Tentative Ruling on Cross-Defendants Marquis Companies 1, Inc. and Porfirio Cano's Motion for Summary Judgment or in the Alternative Summary Adjudication: As a preliminary matter the Court notes that Cross-Complainant, Michael Benson individually and as Successor Trustee of the Benson Living Trust (hereinafter "Benson") has conceded the issues related to the causes of action for breach of contract and negligent misrepresentation. For this reason, summary adjudication as to the breach of contract and negligent misrepresentation causes of action are GRANTED.

Objections

Both parties have provided objections but neither party has fully complied with CRC Rule 3.1354. Benson's objections are in neither of the required formats and Benson fails to provide an order to execute. Cross-Defendants, Marquis Companies 1, Inc. and Portorio Cano's (hereinafter collectively "Marquis") objections are provided in a format similar to that required to CRC Rule 3.1354 but combined the objections and order into one document with an incorrect format. For these reasons, all objections are overruled for failure to comply with CRC 3.1354.

Merits of Motion

As noted above, Benson has conceded the issues related to its causes of action for breach of contract and negligent misrepresentation. This leaves the issues of the causes of actions for negligence and elder abuse along with the issue of punitive damages.

1. Negligence: The elements for a professional negligence cause of action are: 1) the duty of the professional to use such skill, prudence and diligence as other members of his profession commonly possess and exercise; 2) breach of that duty; 3) a proximate causal connection between the negligent conduct and the resulting injury; and 4) actual loss or damages resulting from the professional negligence. *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 611-12.

Marquis construes the Benson's cause of action for professional negligence while Benson attempts to argue that the general negligence standard applies since the negligence is not related to medical care but rather a failure to provide the necessities of life i.e. food and hygiene. Benson's First Amended Complaint labels this particular cause of action as "Negligence" and not professional negligence, medical malpractice, or medical negligence. Regardless of how the cause of action is labeled the allegations clearly show that Benson is

alleging a breach of the standard of care related to providing medical services. Paragraph 38 of the First Amended Complaint states, “That at all times mentioned herein, Cross-Defendants owed Cross-Complainant a duty to met the standard of care for her medical care.” It is clear from the context that the cause of action is one for medical negligence rather than general negligence.

Claims for professional negligence and elder neglect against a skilled nursing facility require a plaintiff to establish a violation of the standard of care through qualified expert opinion testimony. *Turpin v. Sortini* (1982) 31 Cal.3d 200, 229-30. The standard of care can only be established through expert opinion testimony. *Stephenson v. Kaiser Foundation Hospital* (1961) 203 Cal.App.2d 631, 635. Here, Marquis establishes through expert testimony that its staff acted within the requisite standard of care required under the circumstances for the care of Decedent. The declaration of Carl Bryant, RN, CLNC, shows Marquis’ staff appropriately monitored Decedent, created and updated Care Plans and carried out the physician’s orders, all consistent with the applicable standard of care. The declaration also provides that no act or omission by Marquis’ staff caused or contributed to the Decedent’s alleged injuries.

The evidence provided in the declaration is sufficient to prove the standard of care, that Marquis complied with the standard of care and that Marquis’ actions did not cause or contributed to Decedent’s injuries. Based on the foregoing, the burden now shifts to Benson to provide competent expert testimony to refute the expert testimony of Mr. Bryant. CCP § 437c(p)(1), (2). Benson’s only evidence is in the form of the declaration from Ms. Ellen Benson a layperson which includes no expert testimony. Benson has therefore failed to met his burden on the issue of standard of care, breach of the standard of care and causation. For these reasons, summary judgment/adjudication is GRANTED as to the negligence cause of action.

2. Elder Abuse: The Elder Abuse and Dependent Adult Act (hereinafter the “Act”) provides certain enhanced remedies available to a plaintiff who proves abuse of an elder. W&I Code § 15610.27. In particular, if a plaintiff provides “by clear and convincing evidence,” that a defendant is liable for physical abuse, neglect or financial abuse and guilty of “recklessness, oppression, fraud or malice” in the commission of the abuse and that a corporate officer ratified the reckless, oppressive, fraudulent or malicious conduct then plaintiff may recover attorney’s fees and costs. W&I Code § 15657(a). Furthermore, simple professional negligence will never support recovery under the Act. *Delaney v. Baker* (1999) 20 Cal.4th 23. “In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve ‘intentional,’ ‘willful,’ or ‘conscious’ wrongdoing of a ‘despicable’ or ‘injurious’ nature.” *Id.* at 31.

As discussed above, Marquis has met its burden to show that no negligence occurred and Benson has failed to met the shifted burden to show a triable issue of fact to show that negligence did occur. As the elder abuse claim is based on “neglect” this alone is sufficient to grant the motion for summary judgment/adjudication as to the Elder Abuse cause of action. Even if the Court were to assume that Benson has shown negligence, there is no clear and convincing evidence of reckless, oppressive, fraudulent, or malicious conduct nor is there any evidence that the acts complained off were ratified by a corporate officer. W&I Code § 15657; see also Civ. Code § 3294. As Marquis points out the discovery responses provided by Benson provide no factual support for these allegations. The sole evidence in the form of Ms. Ellen Benson’s declaration does not address the issue of the conduct being reckless, oppressive, fraudulent, or malicious conduct or the issue of ratification in some manner by a corporate officer. Based on the foregoing, summary judgment/adjudication is GRANTED as to the Elder Abuse cause of action.

3. Punitive Damages: Benson seeks punitive damages pursuant to Civil Code § 3294 which permits the award of exemplary damages “where the defendant has been guilty of ‘oppression, fraud or malice.’” Marquis has satisfied its burden to show that there was no “oppression, fraud or malice.” Benson’s discovery does not provide any factual support for a finding of “oppression, fraud or malice.” Finally, Benson’s opposition does not oppose or even address the issue of punitive damages. As such Benson has failed to met his burden to show a triable issue of fact on the punitive damages. For this reason, summary judgment/adjudication is GRANTED

on the issue of punitive damages.

The motion for summary judgment is GRANTED in its entirety. A proposed order has been lodged with Court but it does not satisfy the requirements of CCP § 437c(g). Marquis shall prepare the order in accordance with CCP § 437c(g).